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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11

12 SWIFT HARVEST USA, LLC, a
13 California Limited Liability Company,
14 Plaintiff,

15 vs.

16 RITE AID CORPORATION, a
Delaware Corporation, DOES 1-10,
17 Defendant.
18

Case No.: 2:18-cv-10170-JAK-SS

**STIPULATED PROTECTIVE
ORDER**

[Discovery Document: Referred to
Magistrate Judge Suzanne H. Segal]

19 1. A. PURPOSES AND LIMITATIONS

20 Discovery in this action is likely to involve production of confidential,
21 proprietary, or private information for which special protection from public
22 disclosure and from use for any purpose other than prosecuting this litigation may
23 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
24 enter the following Stipulated Protective Order. The parties acknowledge that this
25 Order does not confer blanket protections on all disclosures or responses to
26 discovery and that the protection it affords from public disclosure and use extends
27 only to the limited information or items that are entitled to confidential treatment
28 under the applicable legal principles. The parties further acknowledge, as set forth

1 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
2 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
3 procedures that must be followed and the standards that will be applied when a
4 party seeks permission from the court to file material under seal.

5
6 **B. GOOD CAUSE STATEMENT**

7 This action is likely to involve protected intellectual property, customer and
8 pricing information and other valuable research, development, commercial,
9 financial, technical and/or proprietary information for which special protection
10 from public disclosure and from use for any purpose other than prosecution of this
11 action is warranted. Such confidential and proprietary materials and information
12 consist of, among other things, confidential business or financial
13 information/documents, information regarding confidential business practices,
14 product blueprints, or other confidential research, product development, or
15 commercial information (including information implicating privacy rights of third
16 parties), information otherwise generally unavailable to the public, or which may
17 be privileged or otherwise protected from disclosure under state or federal statutes,
18 court rules, case decisions, or common law. Accordingly, to expedite the flow of
19 information, to facilitate the prompt resolution of disputes over confidentiality of
20 discovery materials, to adequately protect information the parties are entitled to
21 keep confidential, to ensure that the parties are permitted reasonably necessary
22 uses of such material in preparation for and in the conduct of trial, to address their
23 handling at the end of the litigation, and serve the ends of justice, a protective order
24 for such information is justified in this matter. It is the intent of the parties that
25 information will not be designated as confidential for tactical reasons and that
26 nothing be so designated without a good faith belief that it has been maintained in
27 a confidential, non-public manner, and there is good cause why it should not be
28 part of the public record of this case.

1 2. DEFINITIONS

2 2.1 Action: *Swift Harvest USA, LLC v. Rite Aid Corporation*; Case No. LA
3 CV18-10170 JAK (SSx).

4 2.2 Challenging Party: a Party or Non-Party that challenges the designation
5 of information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
7 how it is generated, stored or maintained) or tangible things that qualify for
8 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
9 the Good Cause Statement.

10 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
11 support staff).

12 2.5 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”

15 2.6 Disclosure or Discovery Material: all items or information, regardless of
16 the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced
18 or generated in disclosures or responses to discovery in this matter.

19 2.7 Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve
21 as an expert witness or as a consultant in this Action.

22 2.8 House Counsel: attorneys who are employees of a party to this Action.
23 House Counsel does not include Outside Counsel of Record or any other outside
24 counsel.

25 2.9 Non-Party: any natural person, partnership, corporation, association, or
26 other legal entity not named as a Party to this action.

27 2.10 Outside Counsel of Record: attorneys who are not employees of a party
28 to this Action but are retained to represent or advise a party to this Action and have

1 appeared in this Action on behalf of that party or are affiliated with a law firm
2 which has appeared on behalf of that party, and includes support staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
15 from a Producing Party.

16 17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only
19 Protected Material (as defined above), but also (1) any information copied or
20 extracted from Protected Material; (2) all copies, excerpts, summaries, or
21 compilations of Protected Material; and (3) any testimony, conversations, or
22 presentations by Parties or their Counsel that might reveal Protected Material.

23 Any use of Protected Material at trial shall be governed by the orders of the
24 trial judge. This Order does not govern the use of Protected Material at trial.

25 26 4. DURATION

27 Even after final disposition of this litigation, the confidentiality obligations
28 imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be
2 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
3 with or without prejudice; and (2) final judgment herein after the completion and
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
5 including the time limits for filing any motions or applications for extension of
6 time pursuant to applicable law.

7 8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.

10 Each Party or Non-Party that designates information or items for protection under
11 this Order must take care to limit any such designation to specific material that
12 qualifies under the appropriate standards. The Designating Party must designate for
13 protection only those parts of material, documents, items, or oral or written
14 communications that qualify so that other portions of the material, documents,
15 items, or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations
18 that are shown to be clearly unjustified or that have been made for an improper
19 purpose (e.g., to unnecessarily encumber the case development process or to
20 impose unnecessary expenses and burdens on other parties) may expose the
21 Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it
23 designated for protection do not qualify for protection, that Designating Party must
24 promptly notify all other Parties that it is withdrawing the inapplicable designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in
26 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
28 under this Order must be clearly so designated before the material is disclosed or

1 produced.

2 Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic
4 documents, but excluding transcripts of depositions or other pretrial or trial
5 proceedings), that the Producing Party affix at a minimum, the legend
6 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
7 contains protected material. If only a portion or portions of the material on a page
8 qualifies for protection, the Producing Party also must clearly identify the
9 protected portion(s) (e.g., by making appropriate markings in the margins).

10 A Party or Non-Party that makes original documents available for inspection
11 need not designate them for protection until after the inspecting Party has indicated
12 which documents it would like copied and produced. During the inspection and
13 before the designation, all of the material made available for inspection shall be
14 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
15 documents it wants copied and produced, the Producing Party must determine
16 which documents, or portions thereof, qualify for protection under this Order.
17 Then, before producing the specified documents, the Producing Party must affix
18 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
19 only a portion or portions of the material on a page qualifies for protection, the
20 Producing Party also must clearly identify the protected portion(s) (e.g., by making
21 appropriate markings in the margins).

22 (b) for testimony given in depositions that the Designating Party identify the
23 Disclosure or Discovery Material on the record, within five (5) business days of
24 Outside Counsel of Record’s receipt of the deposition transcript.

25 (c) for information produced in some form other than documentary and for
26 any other tangible items, that the Producing Party affix in a prominent place on the
27 exterior of the container or containers in which the information is stored the legend
28 “CONFIDENTIAL.” If only a portion or portions of the information warrants

1 protection, the Producing Party, to the extent practicable, shall identify the
2 protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
4 failure to designate qualified information or items does not, standing alone, waive
5 the Designating Party's right to secure protection under this Order for such
6 material. Upon timely correction of a designation, the Receiving Party must make
7 reasonable efforts to assure that the material is treated in accordance with the
8 provisions of this Order.

9
10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court's
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37.1 et seq.

16 6.3 The burden of persuasion in any such challenge proceeding shall be on
17 the Designating Party. Frivolous challenges, and those made for an improper
18 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
19 parties) may expose the Challenging Party to sanctions. Unless the Designating
20 Party has waived or withdrawn the confidentiality designation, all parties shall
21 continue to afford the material in question the level of protection to which it is
22 entitled under the Producing Party's designation until the Court rules on the
23 challenge.

24
25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is
27 disclosed or produced by another Party or by a Non-Party in connection with this
28 Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under
2 the conditions described in this Order. When the Action has been terminated, a
3 Receiving Party must comply with the provisions of section 13 below (FINAL
4 DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party at a
6 location and in a secure manner that ensures that access is limited to the persons
7 authorized under this Order.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the Designating Party, a
10 Receiving Party may disclose any information or item designated
11 “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
13 as employees of said Outside Counsel of Record to whom it is reasonably
14 necessary to disclose the information for this Action;

15 (b) the officers, directors, and employees (including House Counsel) of the
16 Receiving Party to whom disclosure is reasonably necessary for this Action;

17 (c) Experts (as defined in this Order) of the Receiving Party to whom
18 disclosure is reasonably necessary for this Action and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the court and its personnel;

21 (e) court reporters and their staff;

22 (f) professional jury or trial consultants, mock jurors, and Professional
23 Vendors to whom disclosure is reasonably necessary for this Action and who have
24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (g) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information;

27 (h) during their depositions, witnesses, and attorneys for witnesses, in the
28 Action to whom disclosure is reasonably necessary provided: (1) the deposing

1 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
2 they will not be permitted to keep any confidential information unless they sign the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
4 agreed by the Designating Party or ordered by the court. Pages of transcribed
5 deposition testimony or exhibits to depositions that reveal Protected Material may
6 be separately bound by the court reporter and may not be disclosed to anyone
7 except as permitted under this Stipulated Protective Order; and

8 (i) any mediator or settlement officer, and their supporting personnel,
9 mutually agreed upon by any of the parties engaged in settlement discussions.

10
11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
12 PRODUCED IN OTHER LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation
14 that compels disclosure of any information or items designated in this Action as
15 “CONFIDENTIAL,” that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena
20 or order is subject to this Protective Order. Such notification shall include a copy
21 of this Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued
23 by the Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served
25 with the subpoena or court order shall not produce any information designated in
26 this action as “CONFIDENTIAL” before a determination by the court from which
27 the subpoena or order issued, unless the Party has obtained the Designating Party’s
28 permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this Action
3 to disobey a lawful directive from another court.
4

5 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
6 PRODUCED IN THIS LITIGATION

7 (a) The terms of this Order are applicable to information produced by a Non-
8 Party in this Action and designated as "CONFIDENTIAL." Such information
9 produced by Non-Parties in connection with this litigation is protected by the
10 remedies and relief provided by this Order. Nothing in these provisions should be
11 construed as prohibiting a Non-Party from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request, to
13 produce a Non-Party's confidential information in its possession, and the Party is
14 subject to an agreement with the Non-Party not to produce the Non-Party's
15 confidential information, then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the Non-Party that
17 some or all of the information requested is subject to a confidentiality agreement
18 with a Non-Party;

19 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
20 Order in this Action, the relevant discovery request(s), and a reasonably specific
21 description of the information requested; and

22 (3) make the information requested available for inspection by the Non-
23 Party, if requested.

24 (c) If the Non-Party fails to seek a protective order from this court within 14
25 days of receiving the notice and accompanying information, the Receiving Party
26 may produce the Non-Party's confidential information responsive to the discovery
27 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
28 not produce any information in its possession or control that is subject to the

1 confidentiality agreement with the Non-Party before a determination by the court.
2 Absent a court order to the contrary, the Non-Party shall bear the burden and
3 expense of seeking protection in this court of its Protected Material.
4

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has
7 disclosed Protected Material to any person or in any circumstance not authorized
8 under this Stipulated Protective Order, the Receiving Party must immediately (a)
9 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
10 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
11 the person or persons to whom unauthorized disclosures were made of all the terms
12 of this Order, and (d) request such person or persons to execute the
13 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
14 A.
15

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
17 OTHERWISE PROTECTED MATERIAL

18 When a Producing Party gives notice to Receiving Parties that certain
19 inadvertently produced material is subject to a claim of privilege or other
20 protection, the obligations of the Receiving Parties are those set forth in Federal
21 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
22 whatever procedure may be established in an e-discovery order that provides for
23 production without prior privilege review. Pursuant to Federal Rule of Evidence
24 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
25 of a communication or information covered by the attorney-client privilege or
26 work product protection, the parties may incorporate their agreement in the
27 stipulated protective order submitted to the court.
28 //

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in
7 this Stipulated Protective Order. Similarly, no Party waives any right to object on
8 any ground to use in evidence of any of the material covered by this Protective
9 Order.

10 12.3 Filing Protected Material. A Party that seeks to file under seal any
11 Protected Material must comply with Civil Local Rule 79-5. Protected Material
12 may only be filed under seal pursuant to a court order authorizing the sealing of the
13 specific Protected Material at issue. If a Party's request to file Protected Material
14 under seal is denied by the court, then the Receiving Party may file the information
15 in the public record unless otherwise instructed by the court.

16
17 13. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in paragraph 4, within
19 60 days of a written request by the Designating Party, each Receiving Party must
20 return all Protected Material to the Producing Party or destroy such material. As
21 used in this subdivision, “all Protected Material” includes all copies, abstracts,
22 compilations, summaries, and any other format reproducing or capturing any of the
23 Protected Material. Whether the Protected Material is returned or destroyed, the
24 Receiving Party must submit a written certification to the Producing Party (and, if
25 not the same person or entity, to the Designating Party) by the 60 day deadline that
26 (1) identifies (by category, where appropriate) all the Protected Material that was
27 returned or destroyed and (2) affirms that the Receiving Party has not retained any
28 copies, abstracts, compilations, summaries or any other format reproducing or

1 capturing any of the Protected Material. Notwithstanding this provision, Counsel
2 are entitled to retain an archival copy of all pleadings, motion papers, trial,
3 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
4 and trial exhibits, expert reports, attorney work product, and consultant and expert
5 work product, even if such materials contain Protected Material. Notwithstanding
6 the foregoing, Counsel may also maintain one (1) copy of all documents for their
7 file. Any such archival copies that contain or constitute Protected Material remain
8 subject to this Protective Order as set forth in Section 4 (DURATION).

9
10 14. Any violation of this Order may be punished by any and all
11 appropriate measures including, without limitation, contempt proceedings and/or
12 monetary sanctions.

13
14 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

15
16 DATED: 4/15/19

/s/ Suzanne H. Segal
THE HONORABLE SUZANNE H. SEGAL
Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of *Swift Harvest USA, LLC v. Rite Aid Corporation*; Case No.
8 LA CV18-10170 JAK (SSx). I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any
12 information or item that is subject to this Stipulated Protective Order to any person
13 or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District
15 Court for the Central District of California for the purpose of enforcing the terms
16 of this Stipulated Protective Order, even if such enforcement proceedings occur
17 after termination of this action. I hereby appoint _____
18 [print or type full name] of _____
19 [print or type full address and telephone number] as my California agent for
20 service of process in connection with this action or any proceedings related to
21 enforcement of this Stipulated Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____